

AMENDMENTS TO THE DRAWINGS:

The attached drawing(s) include changes to FIGS. 5, 6, 7b and 10. The sheets containing FIGS. 5, 6, 7b and 10 replaces the original sheet including FIGS. 5, 6, 7b and 10. FIGS. 5, 6, 7b and 10 have been revised to reverse the orientation of the pump source diodes 4. This change is made is made pursuant to an objection raised by the Examiner.

REMARKS

In accordance with the foregoing, claims 40 and 43 have been cancelled and claims 35-37 have been amended. New claims 44-46 have been added. Claims 35-39, 41, 42 and 44-46 are pending and under consideration.

In item 3 of the Office Action, the Examiner objects to the drawings asserting that the orientation of pump source diode 4 is incorrect. As mentioned above, replacement drawings are being filed herewith. The replacement drawings sheets reverse the pump source diode 4.

In item 4 of the Office Action, the Examiner indicates that the Information Disclosure Statement filed on August 26, 2003 was not in compliance with the rules because the Information Disclosure Statement failed to provide a copy of each foreign patent reference. However, referring to box 6 of the Information Disclosure Statement, the present application is a continuation of prior Application Serial No. 09/790,507 filed on February 23, 2001. Pursuant to 37 CFR §§ 1.53(b) and 1.98(d), copies of references which were filed in a parent application are not required to be submitted. It is respectfully requested that the references be considered and form PTO -1449 be returned to show such consideration.

In Item 6, the Examiner raises an anticipation rejection. The rejection is defective in that it does not clearly cite a reference. Specifically, U.S. Application No. 2002/114066 does not name Inagaki as an inventor. Furthermore, the Examiner has cited two Inagaki references on form PTO-892. Accordingly, it is unclear on which reference the Examiner intended to rely. The Examiner was contacted to obtain clarification. The Examiner indicated that he intended to reply upon U.S. Patent Publication No. 2002/060830. The Undersigned gratefully appreciates the Examiner's assistance regarding the reference. However, because of this defect in the Office Action, it is respectfully submitted that the next Office Action, if the application is not allowed, should be a non-final Office Action.

In addition to the problem with the reference number, the rejection is defective because Inagaki is not available as prior art under 35 U.S.C. § 102(b). The present application has an effective U.S. filing date of February 23, 2001. During a telephone discussion, the Examiner indicated that Patent Office records do not show the existence of Patent Application Serial No. 09/790,507 filed on February 23, 2001. Being filed herewith is a Request for Corrected Filing Receipt. Also enclosed is a copy of the Continuing Utility Patent Application Transmittal and a copy of the Declaration from the parent application. Referring to box 21 of the Continuing Utility Patent Application Transmittal, it should be clear that priority is claimed. Because Inagaki was

not published more than one year prior to the U.S. application date, the reference is not available as prior art under § 102(b).

It should be noted that in compliance with the rules existing on August 26, 2003, the actual (not effective) filing date of the subject application, the specification was amended for a proper claim for priority. The Examiner is requested to review this matter and confirm that the specification amendment has been properly entered.

Independent claim 35 recites a gain controller constantly maintaining the gain for each optical amplification medium. New independent claim 46 recites a gain controller maintaining a constant population inversion ratio for each of the optical amplification mediums. Inagaki simply indicates that the automatic gain control device 250 provides automatic gain. However, Inagaki does not mention the features discussed above. Accordingly, it is submitted that the rejection should be withdrawn.

Claim 41 is rejected under 35 U.S.C. § 103(a) as being obvious over Inagaki in view of U.S. Published Application 2003/0142407 to Kitagawa. Kitagawa does not cure the deficiencies discussed above with regard to Inagaki. Accordingly, it is submitted that this rejection should also be withdrawn.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date:

May 30 2006

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